IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Mahendra Singh & Another Vs. State of Rajasthan
(D.B. CRIMINAL APPEAL NO.1156/2002)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 25-7-2002 in Sessions Case No.35/2001 (21/2k) (19/2k) (54/2k) passed by Smt. Kamal Dutt, RHJS, Additional Sessions Judge (Fast Track) Alwar.

Date of Judgment: March 14, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. R.R.Baisla, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Mahendra Singh and Karam Chand, the appellants herein, were put to trial before learned Additional Sessions Judge (Fast Track) Alwar, who vide judgment dated July 25, 2002 convicted and sentenced them as under:-

U/s.304B IPC:
Each to undergo life imprisonment.

U/s.498A IPC:
Each to undergo three years rigorous imprisonment and fine of Rs.2000/- in default six months rigorous imprisonment.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that the informant Ram Lal (Pw.1)

submitted a written report at Police Station Ramgargh on May 21, 2000 with the averments that his sister Guddi Bai (since deceased) was married to appellant Mahendra Singh. Soon after the marriage Mahendra and his father Karam Chand started harassing Guddi for the demand of dowry and ultimately killed her. On that report a case under sections 304B and 498A IPC was registered and investigation commenced. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) Alwar. Charges under sections 304B and 498A IPC were framed against the appellants, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 13 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence and stated that the deceased died because of fall into the well. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard learned counsel for the parties and with their assistance weighed the material on record.

4. A look at the material on record demonstrates that Guddi Bai died under abnormal circumstances. As per Post Mortem Report (Ex.P-10) the deceased sustained as many as seven injuries and according to Autopsy Surgeon (Pw.8) the cause of death was haemorrhagic shock brought as a result of injuries to mesentric blood vessels. Dhola Ram (Pw.2), who was neighbour of appellant, deposed that deceased came to him in the night and divulged that appellant had given beating to her. Informant Ram Lal (Pw.1) in his deposition stated that deceased was married to appellant Mahendra Singh on May 26, 1999 and soon before her abnormal death she was

subjected to harassment in connection with demand of dowry by appellant Mahendra Singh.

5. The expression `dowry' is defined by Section 2 of the Dowry Prohibition Act,1961 (for short `the Act'), as meaning anything which is given either directly or indirectly, by one party to a marriage to the other party to the marriage or by the parents of either party to a marriage or by any other person to either party to the marriage or to any other person" at or before or after the marriage as consideration for the marriage of the said parties. The act has been amended by Act 63 of 1984 and Act 43 of 1986. Formerly dowry was defined as property given as consideration for the marriage but the words "as consideration for the marriage" have been omitted and substituted by the words "in connection with the marriage". Now dowry means any property given or agreed to be given by the parents of a party to the marriage at marriage or before marriage or at any time after marriage in connection with the marriage.

6. Considering the definition of dowry their Lordships of Supreme Court in Reema Aggarwal Vs. Anupam (2004)3 SCC 199, indicated thus:-

(Para 14)

> "The definition of the term "dowry" under Section 2 of the Dowry Act shows that any property or valuable security given or "agreed to be given" either directly or indirectly by one party to the marriage to the other party to the marriage "at or before or after the marriage" as a "consideration for the marriage of the said parties" would become "dowry" punishable under the Dowry Act. Property or valuable security so as to constitute "dowry" within the meaning of the Dowry Act must, therefore, be given or demanded "as consideration for the marriage".

7. Interpreting the words “in connection with the marriage of the said parties”, the Apex court in Satvir Singh Vs. State of Punjab (2001)8 SCC 633, propounded as under:-

> “The word “dowry” in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act,1961. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time” after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”.
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> (Emphasis supplied)

8. The word “agreement” referred in Section 2 has also been considered in Pawan Kumar Vs. State of Haryana (1998)3 SCC 309, by their Lordships of Supreme Court and it was observed as under:-

(Para 16)

> “Demand for dowry neither conceives nor would conceive of any agreement. The word “agreement” referred to in Section 2 of the Dowry Prohibition Act,1961 has to be inferred on the facts and circumstances of each case. The interpretation that conviction can only be if there is agreement for dowry, is misconceived. This would be contrary to the mandate and object of the Act. “Dowry” definition is to be interpreted with the other provisions of the Act including Section 3, which refers to giving or talking dowry and Section 4 which deals with penalty for demanding dowry, under the 1961 Act and the Indian Penal Code. This makes it clear that even demand of dowry on other ingredients being satisfied is punishable. This leads to the inference, when persistent demands for TV and

> scooter are made from the bride after marriage or from her parents, it would constitute to be in connection with the marriage and it would be a case of demand of dowry within the meaning of Section 304-B IPC. It is not always necessary that there be any agreement for dowry."

9. Their Lordships of Supreme Court in Sunil Bajaj Vs. State of MP [2001(4) Crimes 97 (SC)] propounded that the prosecution must satisfy following essential ingredients for conviction under section 304B IPC:-

> (a) Death of woman must have been caused by burns or bodily injuries or otherwise than under normal circumstances;
> (b) The death must have occurred within 7 years of her marriage;
> (c) Soon before her death, the woman must have been subjected to cruelty or harassment by her husband or other relatives of her husband;
> (d) Such cruelty or harassment must be for or in connection with demand of dowry.

10. That takes me to the question as to whether the appellants have committed the dowry death of Guddi Bai? Section 113-B of the Evidence Act provides that when the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman has been subjected by such person to cruelty or harassment for or in connection with, any demand for dowry, the court shall presume that such person had caused the dowry death.

11. Analysing the words `soon before her death their Lordships of the Supreme Court in Kamesh Panjiyar Vs. State of Bihar (2005)2 SCC 388, held as under:-

> "A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that "soon before her death", the victim was subjected to cruelty or harassment "for or in connection with the demand of dowry". Prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of "death occurring otherwise than in normal circumstances". The expression "soon before her death" is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. Prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case presumption operates. Evidence in that regard has to be led by prosecution. "Soon before" is a relative term and it would depend upon the circumstances of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test as indicated by the said expression both for the proof of an offence of dowry death as well as for raising a presumption under section 113-B of the Evidence Act. A reference to the expression "soon before" used in Section 114 illustration (a) of the Evidence Act is relevant. The determination of the period which can come within the term "soon before" under section 114 illustration (a) is left to be determined by the courts, depending upon the facts and circumstances of each case. Suffice, however, to indicate that the expression "soon before" would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effects of cruelty based on dowry demand and the death concerned. If the alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence."
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> (Emphasis supplied)

12. In K.Prema S.Rao Vs. Yadla Srinivasa Rao (AIR 2003 SC 11) their Lordships of Supreme Court examined the words `soon before her death' and observed as under:-

> "To attract the provisions of S.304-B, IPC, one of the main ingredients of the offence which is required to be established is that "soon before her death" she was subjected to cruelty and

> harassment `in connection with the demand for dowry'. There is no evidence on record to show that the land was demanded as a dowry. It was given by the father to the deceased in marriage ritual as “pasupukumuma”. The harassment or cruelty meted out to the deceased wife by the husband after the marriage to force her to transfer the land in his name was `not in connection with any demand for dowry'. One of the main ingredients of the offence of “demand of dowry” being absent in this case, the accused could not be said to have committed offence under S.304-B.”

13. Having closely scrutinised the evidence adduced at the trial we are satisfied that although charges under sections 498A and 304B IPC are established against appellant Mahendra Singh beyond reasonable doubt, possibility of over implication of appellant Karam Chand cannot be ruled out. Looking to the age of appellant Mahendra Singh we are however of the opinion that imposition of 10 years rigorous imprisonment under section 304B would meet the ends of justice.

14. For these reasons, we dispose of the instant appeal in the following terms:-

> (i) We allow the appeal of appellant Karam Chand and acquit him of the charges under sections 498A and 304B IPC. Appellant Karam Chand, who is in jail, shall be set at liberty forthwith, if not required to be detained in any other case.
>
> (ii) We partly allow the appeal of appellant Mahendra Singh and while maintaining his conviction under section 304B IPC we sentence him to suffer ten years rigorous imprisonment. We however maintain his conviction under section 498A IPC. The sentences are ordered to run concurrently.

(iii) The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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